

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
(TEXARKANA DIVISION)**

**GHJ HOLDINGS, LLC,
Relator,**

vs.

**GRINDMASTER-CECILWARE
CORPORATION,
Defendant.**

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§ **Case No.: 5:11-cv-098 (TJW)**
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§ **JURY TRIAL DEMANDED**

DISMISSAL OF CASE PURSUANT TO ACT OF CONGRESS

WHEREAS, on September 16, 2011, President Obama signed the Leahy-Smith America Invents Act, H.R. 1249, 112th Cong. (2011) (the “Act”) into law.

WHEREAS the Act amended 35 U.S.C. §292 in a way that limits who may sue under this section to: (a) the United States or (b) a person who has suffered a competitive injury as a result of a violation of section 292.

WHEREAS the Act also provides for a retroactive effect of the amendments to section 292 by stating that: “amendments made by this subsection shall apply to all cases, without exception, that are pending on, or commenced on or after, the date of the enactment of this Act.”

WHEREAS Plaintiff has not suffered a competitive injury as a result of a violation of section 292 and therefore no longer has standing to sue Defendant Grindmaster-Ceciliware Corporation (“Defendant”) for a violation of section 292.

NOW, THEREFORE,

IT IS HEREBY STIPULATED BY AND BETWEEN THE PARTIES HERETO,
through their respective counsel, that:

- a) Except as specifically provided in b) below, this case is dismissed: (i) without prejudice to the United States' right to re-file its own claim for the penalty provided thereunder; (ii) with prejudice to the Plaintiff solely on the basis that the Act has retroactively eliminated Plaintiff's standing to bring a claim under 35 U.S.C. §292 against Defendant; and (iii) with each party bearing its own attorneys' fees, costs and expenses.
- b) In the event (and only in the event) that the Act (or the portion thereof that pertains to amendments to 35 U.S.C. §292) is finally held unconstitutional (as retroactively applied to relators like Plaintiff, or otherwise) by the United States Court of Appeals for the Federal Circuit and/or the United States Supreme Court, Plaintiff may within 45 days thereof re-file a claim under 35 U.S.C. §292.

Dated: February 6, 2012

<p>For GHJ Holdings, L.L.C.:</p> <p>By: <u>/s/ Christopher A. Honea</u> Randall T. Garteiser Texas Bar No. 24038912 randall@glgnow.com Christopher Johns Texas Bar No. 24044849 chris.johns@glgnow.com Christopher A. Honea Texas Bar No. 24059967 chris.honea@glgnow.com GARTEISER LAW GROUP 44 North San Pedro Road San Rafael, California 94903 [Tel.] (415)785-3762 [Fax] (415)785-3805</p> <p><i>Attorneys for Relator GHJ Holdings, L.L.C.</i></p>	<p>For Defendant Grandmaster Corporation:</p> <p>By: <u>/s/ Jack A. Wheat (w/ permission)</u> Jack A. Wheat, Lead Attorney (Admitted Pro Hac; KY Bar No. 75945) email: jwheat@stites.com Lindsay Yeakel Capps (Admitted Pro Hac; KY Bar. 92726) email: lcapps@stites.com STITES & HARBISON, PLLC 400 W. Market St., Ste. 1800 Louisville, Kentucky 40202 (P) (502) 587-3400 (F) (502) 587-6391</p> <p>S. Calvin Capshaw State Bar No. 03783900 Elizabeth L. DeRieux State Bar No. 05770585 Capshaw DeRieux, LLP 114 E. Commerce Ave. Gladewater, Texas 75647 (903) 236-9800 Telephone (903) 236-8787 Facsimile E-mail: ccapshaw@capshawlaw.com E-mail: ederieux@capshawlaw.com E-mail: jrambin@capshawlaw.com</p> <p>ATTORNEYS FOR DEFENDANT Grindmaster Corporation</p>
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CERTIFICATE OF SERVICE

I hereby certify that on February 6, 2012, I electronically submitted the foregoing document with the clerk of the court for the U.S. District Court, Eastern District of Texas, using the electronic case files system of the court. The electronic case files system sent a "Notice of Electronic Filing" to individuals who have consented in writing to accept this Notice as service of this document by electronic means.

/s/ Christopher A. Honea
Christopher A. Honea